

1 Stan D. Blyth, State Bar Number 166938  
2 THE LAW OFFICES OF STAN D. BLYTH  
3 11 Embarcadero West, Suite 145  
4 Oakland, CA 94607  
5 Telephone: (510) 272-0200  
6 Facsimile: (510) 225-2384

7 Attorneys for Plaintiff RENTAL SOLUTIONS, LLC

8 Jack W. Fleming, State Bar No. 86292  
9 Thomas J. Eastmond, State Bar No. 211591  
10 MUSICK, PEELER & GARRETT LLP  
11 650 Town Center Drive, Suite 1200  
12 Costa Mesa, California 92626-1925  
13 Telephone: (714) 668-2421  
14 Facsimile: (714) 668-2490

15 Attorneys for Defendants TPA-CKY JOINT VENTURE, CKY, INC., TAN PHUNG & ASSOCIATES,  
16 AMERICAN CONTRACTORS INDEMNITY COMPANY

17 James Edward Ganzer, State Bar No. 99293  
18 GANZER AND WILLIAMS  
19 P.O. Box 7683  
20 Stockton, CA 95207  
21 Telephone (209) 476-1661  
22 Facsimile: (209) 476-1674

23 Attorneys for Defendant CENTRAL VALLEY CONSTRUCTION ENGINEERING, INC.

24 **UNITED STATES DISTRICT COURT**  
25 **FOR THE**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

19 UNITED STATES OF AMERICA, For the )  
20 Use and Benefit of RENTAL SOLUTIONS, )  
21 LLC, )  
22 Plaintiff, )  
23 vs. )

24 CENTRAL VALLEY CONSTRUCTION, )  
25 INC., TPA-CKY JOINT VENTURE, CKY, )  
INC., TAN PHUNG & ASSOCIATES, )  
AMERICAN CONTRACTORS INDEMNITY )  
COMPANY, and DOES 1-20, inclusive, )  
Defendants. )

Civil Action File No. C-07-4929 MPH

**SUPPLEMENTAL JOINT CASE**  
**MANAGEMENT CONFERENCE**  
**STATEMENT**

1  
2 Plaintiff RENTAL SOLUTIONS, LLC ("RENTAL SOLUTIONS") and Defendants  
3 TPA-CKY JOINT VENTURE, ("TPA-CKY JOINT VENTURE") TAN PHUNG &  
4 ASSOCIATES ("TPA"), CKY, INC. ("CKY"), AMERICAN CONTRACTORS INDEMNITY  
5 COMPANY ("AMERICAN") and CENTRAL VALLEY CONSTRUCTION ENGINEERING  
6 COMPANY, INC. ("CENTRAL VALLEY") hereby file the following joint statement pursuant  
7 to Civil Local Rule 16-9:

8 1. **Jurisdiction and Service.** The Court has federal question jurisdiction to hear the  
9 claims and counterclaims in this matter pursuant to the Miller Act (40 U.S.C. §§ 270a-270e), and  
10 28 U.S.C. §§1331, 1337. This Court also has supplemental jurisdiction pursuant to 28 U.S.C.  
11 §1367. All Defendants have now been served and have appeared in the instant action.

12 2. **Facts.** On or about June 30, 2005, Defendants CKY and TPA were awarded a  
13 joint venture contract as TPA-CKY JOINT VENTURE by the United States of America through  
14 the United States Department of the Army Corps of Engineers, more particularly identified as  
15 Contract No. W91238-05-C-0019 (the "Prime Contract,") for flood control work on the Napa  
16 River, in Napa, California.

17 On or about July 21, 2005, Defendant TPA-CKY JOINT VENTURE, as principal, and  
18 Defendant AMERICAN, as surety, executed and delivered Payment Bond, number 234122,  
19 guaranteeing the payment to all persons supplying labor, equipment and materials in the  
20 prosecution of the work provided for in the Prime Contract and any and all duly authorized  
21 modifications thereof, which bond was executed and delivered as foresaid in accordance with the  
22 provisions of an act of the Legislature of the United States of American, dated August 24, 1935,  
23 49 Stat. 793, as amended (40 U.S.C. §§ 270a-270e).  
24  
25

1 During the course of the performance and prosecution of the work provided for in the  
2 Prime Contract, Defendant TPA-CKY JOINT VENTURE entered into a subcontract with  
3 Defendant CENTRAL VALLEY for the performance and prosecution of a part of the work  
4 described in the general contract between Defendant TPA-CKY JOINT VENTURE and the  
5 United States of America. Between July 2006 and October 2006, Plaintiff RENTAL  
6 SOLUTIONS rented equipment to Defendant CENTRAL VALLEY that was used in the  
7 prosecution of the work provided for in the Prime Contract. Defendant CENTRAL VALLEY  
8 has failed and refused to pay the monies owing to Plaintiff RENTAL SOLUTIONS for the rental  
9 equipment.

10 3. **Legal Issues.** At the present time, the parties filing this Supplemental Joint Case  
11 Management Conference Statement are unaware of any disputed points of law.

12 4. **Motions.** On January 16, 2008, Plaintiff RENTAL SOLUTIONS filed an  
13 Administrative Motion to Consolidate the instant action with Civil Action File No. C-07-1568  
14 MJJ, ECCO EQUIPMENT CORPORATION vs. CENTRAL VALLEY CONSTRUCTION, et.  
15 al. To date, no order has been issued regarding this motion.

16 5. **Amendment of Pleadings.** No amendment of the pleadings is contemplated at this  
17 time.

18 6. **Evidence Preservation.** The parties jointly filing this supplemental statement have  
19 preserved all relevant evidence.

20 7. **Disclosures.** Plaintiff timely complied with the initial disclosure requirements  
21 under Federal Rule of Civil Procedure 26(f). While Defendants CKY, TPA, TPA-CKY JOINT  
22 VENTURE and AMERICAN timely indentified witness individual likely to have discoverable  
23 information, said Defendants have not yet identified or produced the documents in their  
24  
25

1 possession, custody, or control that support their claims or defenses as required under Federal  
2 Rule 26. On February 6, 2008, Plaintiff sent a meet and confer letter to said Defendants counsel  
3 regarding this issue.

4 To date, no disclosures have been made by Defendant CENTRAL VALLEY, as it did not  
5 appear in the instant action until February 15, 2008.

6 8. **Discovery.** No discovery has been conducted to date. The parties to this  
7 supplemental joint statement propose no limitations or modifications of the rules of discovery,  
8 other than as may be set forth in the proposed discovery plan set forth below.

9 The parties propose the following discovery plan:

10 **Interrogatories:** Plaintiff RENTAL SOLUTIONS and Defendants TPA-CKY  
11 JOINT VENTURE, CKY, TPA, and AMERICAN (collectively), and Defendant CENTRAL  
12 VALLEY shall each be allowed 50 written interrogatories pursuant to FRCP 33.

13 **Requests for Admission.** Plaintiff RENTAL SOLUTIONS and Defendants TPA-  
14 CKY JOINT VENTURE, CKY, TPA and AMERICAN (collectively), and Defendant  
15 CENTRAL VALLEY shall each be allowed 50 requests for admission under FRCP 33.

16 **Depositions:** Plaintiff RENTAL SOLUTIONS and Defendants TPA-CKY JOINT  
17 VENTURE, CKY, TPA and AMERICAN (collectively), and Defendant CENTRAL VALLEY  
18 shall each be allowed up to 6 depositions on oral examination.

19 **Requests for Production.** Plaintiff RENTAL SOLUTIONS and Defendants TPA-  
20 CKY JOINT VENTURE, CKY, TPA and AMERICAN (collectively), and Defendant  
21 CENTRAL VALLEY shall each be allowed 25 requests for production under FRCP 34.

22 9. **Class Action.** Not applicable to the instant action.  
23  
24  
25

1           10. **Related Cases.** As reported in the Notice of Pendency of Related Action filed at  
2 the outset of this matter, a related action, Civil Action File No. C 07-01568 MJJ, was previously  
3 filed in the United States District Court, Northern District of California, San Francisco Division.  
4 Said related suit was filed by Plaintiff ECCO EQUIPMENT CORPORATION against  
5 Defendants CENTRAL VALLEY, CKY, TPA and AMERICAN for enforcement of the same  
6 Miller Act Payment Bond that Plaintiff RENTAL SOLUTIONS, LLC seeks to enforce in the  
7 instant action.

8           As discussed above, on January 16, 2008, Plaintiff RENTAL SOLUTION filed an  
9 Administrative Motion to Consolidate the instant action with Civil Action File No. C 07-01568  
10 MJJ. To date, no order has been issued in regard to this motion.

11           11. **Relief.** Plaintiff RENTAL SOLUTIONS seeks rentals totaling \$41,629.75, after  
12 deducting all just credits and offsets, plus statutory interest, late charges, attorney's fees and  
13 costs of suit herein incurred, and for such other and further relief as the Court deems just and  
14 equitable. Defendant TPA-CKY JOINT VENTURE has filed a cross-action and it seeks express  
15 and implied indemnity from Defendant CENTRAL VALLEY for all amounts recovered against  
16 it in this action.

17  
18           12. **ADR.** Plaintiff RENTAL SOLUTIONS and Defendants CKY, TPA, TPA-CKY  
19 JOINT VENTURE and AMERICAN have complied with ADR L.R. 3-5, and said parties to this  
20 statement have agreed to mediate the instant dispute. There have also been some preliminary  
21 settlement talks between Plaintiff RENTAL SOLUTIONS and Defendants CKY, TPA, TPA-  
22 CKY JOINT VENTURE and AMERICAN.

23           Defendant CENTRAL VALLEY did not appear in the instant action until February 15,  
24 2008 and it will comply with ADR L.R. 3-5.  
25

1           13. **Consent to Magistrate Judge.** Plaintiff RENTAL SOLUTIONS and Defendants  
2 CKY, TPA, TPA-CKY JOINT VENTURE and AMERICAN did not consent to a Magistrate  
3 Judge, and the instant action was transferred to Judge Marilyn Hall Patel.

4           14. **Other References.** The parties do not believe that this matter is suitable for  
5 reference to binding arbitration, a special master or the Judicial Panel on Multidistrict Litigation.

6           15. **Narrowing of Issues.** At the present time, the parties to this joint statement are  
7 unaware of any issues that can be narrowed by agreement or motion. The parties will work in  
8 good faith to stipulate to all uncontested facts prior to the time of trial. The parties do not  
9 anticipate the need to bifurcate any issues, claims or defenses.

10           16. **Expedited Schedule.** The parties to this statement do not believe that this matter  
11 can be handled on expedited basis.

12           17. **Scheduling.** The parties to this statement propose the following scheduling  
13 deadlines.  
14

15                   **Discovery Cut-Off Date: September 1, 2008**

16                   **Last Date for Dispositive Motions to be Heard: November 1, 2008**

17                   **Final Pretrial Conference: January 15, 2009**

18                   **Trial Date: February 3, 2009**

19           18. **Trial:** This case shall be tried to the Court. The parties to this joint statement  
20 believe that the trial will last 5 days.

21           19. **Disclosure of Non-party Interested Entities or Persons.** The parties to this joint  
22 statement have complied with the certification requirement of Local Rule 3-16.

23           20. **Other Matters.** At the present time, the parties are unaware of any other matters  
24 that may facilitate the just, speedy and inexpensive resolution of this matter.  
25

To: James Ganzer Page 8 of 8

2008-02-17 20:45:15 (GMT)

1-510-225-2384 From: Stan Blyth

1 Dated: February 18, 2008

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**LAW OFFICES OF STAN D. BLYTH**  
11 Embarcadero West, Suite 145  
Oakland, CA 94607

By: 

STAN D. BLYTH, Attorneys for Plaintiff  
RENTAL SOLUTIONS, LLC

**MUSICK, PEELER & GARRETT LLP**  
650 Town Center Drive, Suite 1200  
Costa Mesa, California 92626-1925

By: \_\_\_\_\_

THOMAS J. EASTMAN, Attorneys for  
Defendants TPA-CKY JOINT VENTURE,  
CKY, INC., TAN PHUNG & ASSOCIATES,  
AMERICAN CONTRACTORS  
INDEMNITY COMPANY

**GANZER AND WILLIAMS**  
P.O. Box 7683  
Stockton, CA 95207

By: 

James Edward Ganzer, Attorneys for  
Defendant CENTRAL VALLEY  
CONSTRUCTION ENGINEERING, INC.

1 Dated: February 18, 2008

**LAW OFFICES OF STAN D. BLYTH**  
11 Embarcadero West, Suite 145  
Oakland, CA 94607

2  
3 By: \_\_\_\_\_  
4 STAN D. BLYTH, Attorneys for Plaintiff  
5 RENTAL SOLUTIONS, LLC

6  
7 **MUSICK, PEELER & GARRETT LLP**  
650 Town Center Drive, Suite 1200  
8 Costa Mesa, California 92626-1925

9 By: Thomas Eastman  
10 THOMAS J. EASTMAN, Attorneys for  
11 Defendants TPA-CKY JOINT VENTURE,  
12 CKY, INC., TAN PHUNG & ASSOCIATES,  
13 AMERICAN CONTRACTORS  
14 INDEMNITY COMPANY

15  
16 **GANZER AND WILLIAMS**  
P.O. Box 7683  
17 Stockton, CA 95207

18  
19 By: \_\_\_\_\_  
20 James Edward Ganzer, Attorneys for  
21 Defendant CENTRAL VALLEY  
22 CONSTRUCTION ENGINEERING, INC.  
23  
24  
25